

1982 WL 189335 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1982

***1 RE: Dual Office Holding of Counselor of the Department of Youth Services and City Council**

Ms. Susan M. Durst
Executive Assistant
S. C. Department of Youth Services
P. O. Box 7367
Columbia, S.C. 29202

Dear Ms. Durst:

You have asked the opinion of this Office on the question of whether the counselor-in-charge of the Horry County Department of Youth Services can serve as a member of the Conway City Council without violating the constitutional provisions against dual office holding.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor or profit at the same time.’ Also see, Article VI, § 3. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). In [Sanders](#), the Supreme Court defined ‘officer’ as follows:

One who is charged by law with duties involving an exercise of some part of sovereign power, either small or great in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer.

Other criteria such as tenure, salary, oath, etc., also may be relevant, but not conclusive. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d. 61 (1980).

This Office has previously held that the discharge of duties assigned to probation officers involve the exercise of some portion of the sovereign power of the State. [§ 24-21-280, Code of Laws](#) (1976). Therefore, a probation officer holds a ‘public office’ within the meaning of Article VII, § 1A. Ops. Atty. Gen'l 1974, No. 1769. The statutory duties of a counselor of the Department of Youth Services involve similar functions as the adult probation officer in the family court setting. See; [§ 20-7-3210](#), 3220, 3410, [Code of Laws](#) (1976). Therefore, it is the opinion of this Office that the counselor in charge is a ‘public officer.’

The position of municipal councilman is an elective office created pursuant to the statutes of this State. These statutes further demonstrate that the exercise of the duties of this Office involve a continuing and substantial exercise of the sovereign power of the State. Title 5, Chapters 5 through 15, [Code of Laws](#) (1976). Therefore, the position of councilman is an office within the meaning of [Article XVII, § 1A](#).

Based on the foregoing, it is the opinion of the Office that the position of city councilman and counselor for the Department are both offices within the meaning of the Constitution and would be dual office holding if concurrently held. As a result thereof, the counselor would have to vacate the position as counselor with the Department upon the entering of the office of municipal councilman.

If you have any questions, please contact me.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

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